



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	01/26/06	Bill No:	AB 1029
Tax:	Administration	Author:	J. Horton
Related Bills:	AB 1655		

BILL SUMMARY

This bill would prohibit Board Members from participating in the personnel process, except as specified.

Summary of Amendments

Since the previous analysis, this bill deleted the provisions that would have (1) required Senate confirmation when the Board appoints its executive officer, (2) required a Board Member to disclose an ex parte communication on any matter pending before the Board for adjudication, as specified and defined, (3) specified that all relevant information on any matter set for an adjudicatory hearing before the Board shall be provided to all parties to the matter and Board proceeding staff at least 14 days prior to the hearing (4) specified that if any relevant information is offered or provided by the taxpayer that was not made available to all parties to the proceeding, the hearing shall be continued to a hearing date not less than 14 days after the information is made available to the parties, (5) allowed the parties to the matter to agree to waive the continuance if they determine continuance is unnecessary for fair resolution of the matter, (6) requires the Board to make public and readily available on the Internet all Board decisions and determinations, and (7) allowed the Board to sell copies of any decision or determination that are required to be published.

ANALYSIS

Current Law

The Board administers the sales and use tax and various excise taxes; sets values for property for state-assesseees; monitors the property tax assessment practices of county assessors; reviews, equalizes and adjusts assessments of certain land owned by local government; and hears appeals of income and bank and corporation taxes administered by the Franchise Tax Board. The California Constitution establishes that the Board consist of 5 voting members: The Controller and four members elected at gubernatorial elections from districts for 4-year terms.

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Proposed Law

This bill would amend Section 15604 of the Government Code to prohibit a Board Member from participating in the personnel process, except for (1) hiring that is at or above the level of Career Executive Appointment or district administrator, or hiring immediate staff, (2) legal matters coming before the Board in connection with personnel, and (3) as otherwise necessary to carry out its Constitutional duties.

The bill would become operative January 1, 2007.

COMMENTS

1. **Sponsor and Purpose.** According to the author's office, this bill is sponsored by the SEIU Local 1000. Its purpose is to make the rank and file state employees independent of the political process, thereby creating more consistency in employment practices and increased continuity in the application of the tax law from district office to district office.
2. **The January 26, 2006 amendments** delete the provisions that would have (1) required Senate confirmation when the Board appointed its executive officer, (2) required a Board Member to disclose an ex parte communication on any matter pending before the Board for adjudication, as specified and defined, (3) specified that all relevant information on any matter set for an adjudicatory hearing before the Board should be provided to all parties to the matter and Board proceeding staff at least 14 days prior to the hearing, (4) specified that if any relevant information is offered or provided by the taxpayer that was not made available to all parties to the proceeding, the hearing should be continued to a hearing date not less than 14 days after the information is made available to the parties, (5) allowed the parties to the matter to agree to waive the continuance if they determined continuance is unnecessary for fair resolution of the matter, (6) required the Board to make public and readily available on the Internet all Board decisions and determinations, and (7) allowed the Board to sell copies of any decision or determination that would have required publication.
3. **Prohibiting Board Members from participating in the personnel process raises interpretive issues and would be difficult to enforce.** If enacted in its present form, the bill would create significant ambiguity with respect to what the Board Members can or cannot do with respect to personnel. For example, the Board maintains a Superior Accomplishment Award Program which recognizes individual employees, or groups of employees, for exceptional job performance. The Board Members participate in the awards ceremony by presenting the awards to the recipients. Could this be construed as "participating" in the hiring or promoting of employees?

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Regarding the extent to which this prohibition would apply, there are a variety of situations in which the Board Members, either independently, or as a whole, come in contact with “personnel process.” For example, would a Member encouraging an employee known to the Member to apply for a particular opening be regarded as participating in the hiring or promoting process? What if a Member receives a letter praising a particular employee, and the Member sends the letter to the Executive Director with instructions to send a copy to be placed in the employee's personnel file? What about Board Member participation in the reorganization of the Board's duties, responsibilities, and reporting relationships? Would these situations be regarded as “participation in the hiring, dismissal, or promoting process?”

4. **Constitutional officers are required to be involved in all aspects of the offices they serve.** Currently, there are no other constitutional officers of this state that are prohibited from participating in personnel matters of the office, department or agency to which they were elected to oversee. In fact, it is their constitutional duty to be mindful of the staff of the offices for which they serve. It would be illogical to single out the Members of the Board who are charged with managing the agency to which they were elected from participating in its own agency's personnel issues.
5. **The bill prohibits the Members of the Board from participating in the personnel process except as otherwise necessary to discharge its duties derived from the California Constitution.** As the chief administrators of the agency, it appears any participation in the personnel process would arguably fall within the Board's constitutional duties.
6. **There is already a body of law that exists to protect rank and file workers with regard to hiring and dismissal of employees.** California law already provides adequate protection with regard to procedures for the hiring and dismissal of civil service employees. It would be far more appropriate that any problems in this area be left to the collective bargaining process.
7. **The bill raises a concern over separation of powers.** The doctrine of separation of powers devised by the framers of the Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist. Based on their experience, the framers shied away from giving any branch of government too much power. Based on the doctrine of separation of powers, it appears inappropriate for the Legislature to interfere with the personnel decisions of a separate branch of government.
8. **Related legislation.** Last year, AB 1655 (Horton) contained a similar provision. That measure was ultimately gutted, amended, and enacted with provisions falling outside the scope of this agency.

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COST ESTIMATE

Administrative costs could be expected in interpreting these ambiguous provisions. These costs appear to be absorbable.

REVENUE ESTIMATE

Enactment of this bill would not appear to impact revenues.

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